



Legislative Bulletin.....April 19, 2007

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H.R. 1495—Water Resources Development Act of 2007

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: Various

Total Cost of Discretionary Authorizations: \$7.6 billion over the 2008-2012 period with an estimated cost of implementation over the first 15 years of \$13.2 billion

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$9 million decrease over five years from offsetting receipts.

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 1

H.R. 1495—Water Resources Development Act of 2007 (Oberstar-MN)

NOTE:

--The last WRDA passed by the House was in 2005 (H.R. 2864), at a cost of \$4.369 billion over five years. The last time WRDA was *signed into law* was in 2000 (Public Law 106-541), at a cost of \$1.6 billion over five years. This year's bill would authorize **\$7.62 billion over five years--and the total cost of implementing the bill would amount to \$13.2 billion over the first fifteen years.**

--The Congressional Research Service notes that, "The Corps now has a 'backlog' of more than 500 authorized projects that have not consistently received construction appropriations."

--**H.R. 1495 contains more than 700 earmarks (as listed in House Report 110-80). The Manager's Amendment includes 128 earmarks.**

--The Statement of Administration Policy (SAP) states, "The Administration strongly opposes H.R. 1495 in its current form."

Order of Business: H.R. 1495 is scheduled to be considered under a structured rule (H.Res. 319) on April 19, 2007. Amendments made in order under the rule are summarized below.

Summary: H.R. 1495 authorizes Army Corps of Engineers river and harbor projects under the Water Resources Development Act (WRDA) and otherwise provides for funds aimed at the development and conservation of water resources. Highlights of the bill are as follows:

Title I—Water Resources Projects

- Authorizes appropriations for **43** water resources projects (listed in the bill) in Alaska, Arizona, Arkansas, California, Colorado, Florida, Illinois, Iowa, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Kansas, New Jersey, New Mexico, New York, Ohio, Pennsylvania, South Carolina, Texas, and Virginia.
- Requires the Secretary of the Army to determine whether a flood damage reduction project is justified in **35** localities (listed in the bill) in Alabama, Arizona, Arkansas, California, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, South Carolina, and Texas—and allows the Secretary to carry out the projects deemed appropriate. Also provides special rules for 7 of the 35 projects.
- Requires the Secretary of the Army to determine whether an emergency streambank protection project is justified in **17** localities (listed in the bill) in Florida, Arkansas,

Louisiana, Maryland, Minnesota, Missouri, New York, Tennessee, Texas, and Vermont—and allows the Secretary to carry out the projects deemed appropriate.

- Requires the Secretary of the Army to determine whether a navigation project is justified in **10** localities (listed in the bill) in Louisiana, Massachusetts, Minnesota, New York and Michigan—and allows the Secretary to carry out the projects deemed appropriate. Also provides special rules for two of the 10 projects.
- Requires the Secretary of the Army to determine whether an environmental improvement project is justified in **seven** localities (listed in the bill) in California, Florida, Missouri, New Jersey and Delaware, and Pennsylvania—and allows the Secretary to carry out the projects deemed appropriate.
- Requires the Secretary of the Army to determine whether an aquatic ecosystem project is justified in **28** localities (listed in the bill) in Alabama, Alaska, California, Florida, Georgia, Louisiana, Massachusetts, Minnesota, Missouri, Nevada, New Jersey, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, and Vermont—and allows the Secretary to carry out the projects deemed appropriate. Also provides a special rule for one of the 28 projects.
- Requires the Secretary of the Army to determine whether a shoreline protection project is justified in **seven** localities (listed in the bill) in Alaska, Florida, Guam, New York, Texas and Pennsylvania—and allows the Secretary to carry out the projects deemed appropriate.
- Requires the Secretary of the Army to determine whether a snagging and sediment removal project is justified in **one** locality (listed in the bill) in New York—and allows the Secretary to carry out the project, if deemed appropriate.

Title II—General Provisions

- Prohibits the Secretary of the Army from soliciting non-federal contributions for projects in excess of the non-federal share listed in this legislation.
- Increases the annual authorization for Small Shore and Beach Restoration and Protection Projects from \$3 million to \$5 million.
- Increases the annual authorization for aquatic ecosystem restoration projects from \$25 million to \$40 million.
- Increases the annual authorization for Small Flood Package Reduction projects from \$50 million to \$60 million.
- Increases the annual authorization for projects for Improvement of the Quality of the Environment from \$25 million to \$30 million.

- Authorizes \$150 million over five years for a new program for the Secretary to provide assessment, planning, and design assistance to state and local governments for remediation, environmental restoration, and reuse of areas that will contribute to improvement in water quality or to conservation of water and related resources. The federal share could not exceed 50%.
- Requires that the Army compile and print a volume of all laws related to the improvement of rivers and harbors, flood control, beach erosion, and other water resources development.
- Authorizes the Secretary to enter into cost-sharing agreements with non-federal entities for dredged materials projects.
- Permits the Secretary to recommend a project for harbor and navigation improvements without the need to demonstrate that the project is justified solely by national economic development benefits if the affected community is relatively remote, or is in one of the U.S. territories, or relies on the harbor for its survival.
- Allows cost-sharing of the use of dredged materials at any water resources project (not just aquatic ecosystem restoration projects, as in current law) and allows non-profit entities to serve as the non-federal interest for such a project under certain circumstances. Identifies priority areas in Arkansas, Florida, Louisiana, New York, North Carolina, Washington and Texas.
- Waives cost-sharing requirements up to \$500,000 for projects in Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the United States Virgin Island. Cost-sharing requirements are also waived for projects in Indian Country (defined as lands within a jurisdictional area of an Oklahoma Indian tribe) and also for land in Alaska owned by an Alaska Native Regional Corporation or an Alaska native Village or in the Metlakatla Indian Community.
- Provides that for projects with an increase in the maximum amount of federal funds authorized or in the total cost, cost-sharing requirements would not be affected.
- Directs the Secretary to expedite any authorized flood damage reduction project for areas that have been affected by major-disaster or deadly flooding within the previous five years.
- Adds the Secretary of the Army to the list of federal agencies authorized to enter into contracts with state and local governmental entities, including local fire districts, for procurement of firefighting services.
- Authorizes the Secretary to provide certain technical planning assistance to a non-federal entity, at their request and at federal expense.

- Adds six new authorized lake silt-removal projects in Illinois, New Jersey, North Carolina, New York, and Pennsylvania.
- Requires the Secretary to develop and implement a coordinated review process for water resources projects, with the goal of streamlining the review, licensing, and approvals procedures.
- Authorizes the Secretary to enter into cooperative agreements with nonprofit entities to carry out wetlands restoration at authorized water projects, capped at \$1 million per project and \$5 million per year.
- Allows persons not employed by the Army Corps of Engineers to participate in Corps of Engineers training classes (at cost to the participating students).
- Creates a new program to provide public access to water resources and related water quality data held by the Corps of Engineers. Authorizes \$5 million for this purpose on an annual basis.
- Directs the Secretary to issue updated ability-to-pay criteria by September 30, 2007 for three projects in Missouri, Texas, and West Virginia and Pennsylvania.
- Adds federally recognized Indian tribes to list of entities afforded priority by Corps of Engineers for leasing Corps property.
- States that the estimated federal and non-federal shares of authorized projects are for informational purposes and not to be interpreted as affecting cost-sharing under law.
- Allows the Secretary to select a project that does not maximize net national economic development or national ecosystem restoration benefits (in the case of ecosystem restoration projects) if there is “an overriding reason based on other Federal, state, local, or international concerns.”
- Requires independent peer review of authorized projects that have an estimated cost of more than \$50 million, with the ability of the Chief of Engineers to exclude certain projects or include projects below the threshold that are controversial. Reviews are limited to a cost of \$500,000, unless waived by the Chief of Engineers.
- Repeals Section 6009 of PL 109-13. This requires future energy exploration and energy production benefits to be taken into account in calculating the economic benefits of a navigation project.
- Requires the Secretary to ensure to “maximum extent practicable” that in entering into a contract with a private firm, 50 percent of the workforce of a project is from the local area and that the same will apply to any subcontractor for the project.

Title III—Project-Related Provisions

- Provides cost ceilings and other limitations on 118 water projects (listed in the bill) in Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, Washington, West Virginia, and Wisconsin.
- Extends for five years, the authorizations of three expiring projects for five years (one in California, one in Guam, and one in Massachusetts).
- Extends the authorizations of three projects (one in Michigan/Wisconsin, one in Wisconsin, and one in Minnesota), pending determination by the Secretary of the Army that such reauthorization is feasible.
- Terminates, in whole, or in part the authorizations for 11 projects in Connecticut, Massachusetts, Washington, and Maine.
- Authorizes eight land conveyances in Arkansas, Kansas, Missouri, Oregon, South Carolina, and Texas.
- Eliminates reversionary interests and use restrictions for three projects in Idaho, Tennessee, and Washington.

Title IV—Studies

- Authorizes 86 new water-related studies (detailed in the bill) in Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

Title V—Miscellaneous Provisions

- Allows the Secretary of the Army (upon request of an appropriate non-federal entity) to maintain six navigation channels and breakwaters constructed or improved by a non-federal interest in Florida, Louisiana, Tennessee, Texas, and Wisconsin.
- Allows the Secretary to provide up to 50% of the costs of technical, planning, and design assistance to non-federal interests for watershed management, restoration, and development at 19 locations (listed in the bill) in Georgia, Illinois, Louisiana, Nebraska, New Mexico, Massachusetts, New Jersey, New York, New Jersey, Ohio, Pennsylvania, and Washington. Authorizes a total of \$15 million for such assistance.

- Allows the Secretary to provide dam safety assistance at eight locations (listed in the bill) in Idaho, Michigan, New York, and Pennsylvania. Authorizes a total of \$6 million for such assistance.
- Allows the Secretary, upon request from a non-federal entity, to conduct structural integrity evaluations of flood damage reduction projects and to make repairs and take other corrective action, as needed. Prioritizes a project in Arkansas and another in Tennessee.
- Adds five areas in Louisiana to the current list of flood mitigation priority areas. Authorizes \$20 million.
- Requires the expedited study (and completion, if feasible) of eight potential projects in Louisiana, New York, and Massachusetts.
- Expedites completion of reports (and if determined to be feasible on to project pre-construction, engineering, and design) for four projects in Arkansas, Florida, Louisiana, and Texas.
- Authorizes \$7 million for an assessment of the water resources needs of the river basins and watersheds of the southeastern United States.
- Authorizes \$4 million for the Upper Mississippi River dispersal barrier project, which is a project to prevent and reduce the dispersal of aquatic nuisance species through the Upper Mississippi River dispersal barrier project.
- Increases Chesapeake Bay environmental restoration and protection program from \$10 million to \$50 million.
- Authorizes the Secretary to participate with others in assessing hypoxia in the Gulf of Mexico.
- Authorizes 100 new projects and studies in Alabama, Alaska, Arkansas, California, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Virginia, Missouri, Minnesota, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, Tennessee, Texas, Washington, and West Virginia.

Title VI—Florida Everglades

- Increases and otherwise adjusts the authorizations for and provisions regarding several projects in the Florida Everglades.
- Authorizes an Indian River Lagoon South project at a cost of \$682.5 million for the federal share of the project.
- Terminates the authorizations for three Florida Everglades projects.

Title VII—Louisiana Coastal Area

- Requires the Secretary, in coordination with the Governor, to develop a comprehensive plan for protecting, preserving, and restoring the coastal Louisiana ecosystem.
- Authorizes the Secretary to carry out a new program for ecosystem restoration of the Louisiana Coastal area.
- Establishes a Coastal Louisiana Ecosystem Protection and Restoration Task Force.
- Authorizes a total of \$1.1 billion for construction projects listed in section 7006 of the bill. Also authorizes four other projects in Louisiana if the Secretary determines they are feasible at a total cost of \$184.6 million.
- Allows other federal funds to be used to fund the *non-federal* portion of projects in the Louisiana Coastal Area.
- Expedites completion of reports (and if determined to be feasible project pre-construction, engineering, and design) on nine Louisiana projects.
- Authorizes the Secretary to carry out nine projects in New Orleans and the surrounding area.

Title VIII—Upper Mississippi River and Illinois Waterway System

- Authorizes the Secretary to undertake navigation improvements and restoration of the ecosystem for the Upper Mississippi River and Illinois Water System.
- Authorizes \$235 million (half from the Treasury and half from the Inland Waterways Trust Fund) for small scale and nonstructural projects on the Upper Mississippi.
- Authorizes \$1.8 billion (half from the Treasury and half from the Inland Waterways Trust Fund) for new locks on the Upper Mississippi River and Illinois Waterway.
- Authorizes \$1.58 billion for ecosystem restoration projects.
- Requires a determination of whether projects under this title are being carried out at a comparable rate and, if not, adjustment of annual funding requests accordingly.

Amendments Made in Order under the Rule (H.Res. 319):

All amendments are debatable for 10 minutes.

1. **Oberstar (D-MN): Manager’s Amendment:** Authorizes or modifies dozens of projects. The list of earmarks pre-printed in the Congressional Record on March 29, 2007 lists 128 earmarks.

2. **Boswell (D-IA)**: Provides the Rathbun Regional Water Association with the right of first refusal to purchase any remaining water supply storage in Rathbun Lake, Iowa. The Rathbun Regional Water Association would be responsible for paying for any such purchases.

3. **Rohrabacher (R-CA)**: Allows non-federal interests to levy a container or tonnage fee on imports at U.S. ports. The fees collected by the ports under this measure could only be spent on infrastructure and security related to the port that levies the fee.

4. **Stupak (D-MI)**: Requires the Secretary to budget and request appropriations for operation and maintenance of harbor dredging projects based only upon the criteria used for such projects in FY 2004 instead of using a standard based on the amount of tonnage a harbor handles.

5. **Blumenauer (D-OR)/Welch (D-VT)**: Strikes Section 2036 from the bill. Requires the Secretary to publish a proposal within 270 days, allow at least 60 days for public comment of the proposal, and then issue final principles and guidelines for the Secretary to use in the formulation, evaluation, and implementation of water resources projects.

6. **Kirk (R-IL)**: Adds a new section to the bill creating a new program for “Small Projects for the Rehabilitation and Removal of Dams.” Allows the Secretary to carry out a small dam removal or rehabilitation project if the Secretary determines the project is in the national interest or will improve the quality of the environment. Requires the non-federal interest to pay for at least 35 percent of the construction costs as well as for 100 percent of the operations and maintenance costs. \$25 million is authorized for the program, with no more than \$5 million to be spent on any one project.

Additional Background: WRDA is generally authorized every few years. The last authorization passed by the House was in 2005 at a cost of \$4.369 billion over five years. The last time WRDA was signed into law was in 2000 (Public Law 106-541), at a cost of \$1.6 billion over five years. This year’s bill would authorize \$7.62 billion over five years.

Committee Action: H.R. 1495 was introduced on March 13, 2007 and referred to the Committee on Transportation and Infrastructure, which held a markup and ordered the bill to be reported by voice vote on March 15, 2007.

Possible Conservative Concerns: Some conservatives may be concerned at the high level of authorizations (compared to recent WRDA bills—see “Additional Background” above). Conservatives may also be concerned about the large number of earmarks included in the bill: more than 700 in the bill and 128 in the Manager’s Amendment filed by Representative Oberstar (D-MN).

Administration Position: The Statement of Administration Policy (SAP) states: “The Administration estimates that it would cost at least \$15 billion and possibly substantially more to implement the hundreds of new projects and programs that H.R. 1495 contains. The bill would increase the Federal cost-share for many projects, authorize projects outside of the Army Corps of Engineers’ (Corps) mission, and not ensure that projects yield high economic and environmental returns. In a time of much-needed fiscal restraint, the additional spending in this

bill is unacceptable. For these reasons, the Administration strongly opposes H.R. 1495 in its current form.”

Cost to Taxpayers: CBO reports that H.R. 1495 would authorize appropriations of \$1.654 billion in FY2008 and a total of \$7.62 billion over the FY2008-2012 period. The total cost of implementing the bill over the first 15 years would come to \$13.2 billion.

Earmark Compliance: The bill, as listed in House Report 110-80, contains more than 700 earmarks. The Manager’s Amendment, as pre-printed in the Congressional Record, lists another 128 earmarks.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill contains various new federal programs and authorities.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No

Constitutional Authority: The Transportation and Infrastructure Committee, in House Report 110-80, cites constitutional authority in Article I, Section, but fails to cite a specific clause. House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” (*emphasis added*)

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